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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,317	05/28/2002	Mikkel Selder	003300-927	7288

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EXAMINER	
BEISNER, WILLIAM H	
ART UNIT	PAPER NUMBER
1744	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/089,317	SELDER, MIKKEL	
	Examiner	Art Unit	
	William H. Beisner	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/29/02&3/20/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statements filed 3/29/02 and 3/20/03 have been considered and made of record. Note, the references of the IDS filed 3/20/03 have only been considered in view of their indications as "A" references on the Hungarian Patent Office search report. Only abstracts have been provided and these abstracts are not in English.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Rice (US 1,732,420).

The reference of Rice discloses a wood product that is treated with linseed oil that is the same as that recited in claims 10 and 20. Note if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the

prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

5. Claims 10 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated McDonald (US 2,860,070).

The reference of McDonald discloses a wood product that is treated with linseed oil that is the same as that recited in claims 10 and 20. Note if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-5, 9-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,860,070).

The reference of McDonald discloses the impregnation of wood with linseed oil where the method includes the steps of charging autoclave (11) with product (18) to be treated. The reference discloses charging the autoclave (11) with a treatment solution heated to a temperature exceeding the boiling point of water so that the product will be surrounded by the treatment solution (See column 5, line 60, to column 6, line 16). The method includes applying a vacuum to the autoclave (11) while maintaining the heated temperature such that water in the form of steam and air enclosed in the product is released from the product (See column 6, lines 40-51). The reference discloses a "soaking" step that is performed after the "drying" process. This process requires cooling of the treating solution. The reference discloses that cooling can be performed by discharging the hot treatment solution with simultaneous supply of a cooler treatment solution (See column 8, lines 1-8). The reference also discloses applying an overpressure during this "soaking" process (See column 8, lines 9-16). After performing a treating process, the treatment solution is discharged from the autoclave and a vacuum is applied to the product (See column 9, lines 55-74).

With respect to claim 1, while the preferred process involves the use of a solvent as the treatment solution followed by a separate "treating" step using linseed oil (See column 8, line 54, to column 9, line 44), the reference discloses that when the wood to be treated contains no resins, the impregnating additive (linseed oil) can be incorporated into the original solvent bath (See column 10, lines 36-49).

In view of this disclosure, when treating wood that does not include resins or other such "extractives", it would have been obvious to one of ordinary skill in the art at the time the invention was made to include linseed oil in the original "drying" and "soaking" steps. This would result in an impregnation process with linseed oil that meets the language of instant claim 1.

With respect to claim 2, while the reference of McDonald discloses a treatment temperature between the azeotrope boiling point and the solvent boiling point at the existing pressure (See column 5, lines 60-67), the reference does not disclose the specific temperature disclosed in claim 2. However, in the absence of a showing of criticality and/or unexpected results and based merely on the properties of the treatment solution (linseed oil) and the operating pressures of the autoclave, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum treatment temperature while providing a treatment temperature between the azeotrope boiling point and the solvent boiling point at the existing pressure.

With respect to the specific vacuum pressure of claims 3 and 11, in the absence of a showing of criticality and/or unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum vacuum to employ while providing the required removal of vapors from the autoclave.

With respect to the cold treatment solution temperature of claims 4, 12 and 13, while the reference of McDonald discloses a temperature below 190 degrees F, the reference does not disclose the specific range of claim 4. However, in the absence of a showing of criticality and/or unexpected results, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to determine the optimum cooling temperature based merely on the specific properties of the product and the treatment solution while providing the required conditions for impregnating the product with the solution.

With respect to the specific over pressure of claims 5, 14 and 15, in the absence of a showing of criticality and/or unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the optimum over pressure valve while providing the required compression of vapors in the wood product and allow the treatment solution to penetrate the wood product.

With respect to the drying step of claims 9, 18 and 19, in the absence of a showing of criticality and/or unexpected results, it would have been obvious to one of ordinary skill in the art to allow further drying of the treated wood for the known and expected result of allowing the wood to dry at an environmental temperature and pressure prior to use of the wood product, as is conventional in the art.

With respect to claims 10 and 20, the resulting treated product of the method discussed above would result in a product that is the same as that recited in claims 10 and 20.

9. Claims 6-8, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (US 2,860,070) in view of Kraft Foods (GB 701,633).

The reference of McDonald has been discussed above.

Claims 6-8, 16 and 17 differ by reciting that the linseed oil is a processed linseed oil that has free tocopherol being less than about 100ppm.

The reference of GB 701,633 discloses that oils with low concentrations of tocopherol are more stable against rancidity and reversion (See page 1, lines 11-25, and page 12, lines 56-90).

In view of this teaching and in the absence of a showing of criticality and/or unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a linseed oil with low concentrations of free tocopherol for the known and expected result of employing an oil that is stable against rancidity and reversion as suggested by the reference of GB 701,633.

Double Patenting

10. Claim 19 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 9. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William H. Beisner
Primary Examiner
Art Unit 1744

WHB